

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

7 Attorneys for Defendant STARBUCKS
8 CORPORATION

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10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13

14 DOUGLAS TROESTER, on behalf of
15 himself, and all others similarly
16 situated,

17 Plaintiffs,

18 v.

19 STARBUCKS CORPORATION, a
20 Washington corporation; and DOES 1-
21 50, inclusive,

22 Defendants.

Case No. **CV 12-7677** -DSF
CLASS ACTION

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**STARBUCKS CORPORATION'S
NOTICE OF REMOVAL OF
ACTION PURSUANT TO 28 U.S.C.
§§ 1332(D)(2), 1441, 1446, AND 1453**

*[Filed Concurrently with Declarations
of Jana Rutt and Mark R. Curiel;
Notice of Interested Parties; Notice of
Related Cases; Civil Cover Sheet]*

Date Action Filed: August 6, 2012

*(Los Angeles County Superior Court,
No. BC489781)*

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Starbucks Corporation ("Starbucks")
4 hereby removes to this Court the state court action described below, pursuant to 28
5 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. In support thereof, Starbucks states as
6 follows:

7 1. On August 6, 2012, a putative class action was commenced and is currently
8 pending against Starbucks in the Superior Court of California, County of Los Angeles,
9 as Case No. BC489781, entitled *Douglas Troester, on behalf of himself, and all others*
10 *similarly situated, Plaintiffs, vs. Starbucks Corporation, a Washington Corporation; and*
11 *DOES 1-50, inclusive, Defendants.* On August 10, 2012, Starbucks was served with the
12 complaint. See Declaration of Mark R. Curiel in Support of Starbucks Corporation's
13 Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and
14 1453 ("Curiel Decl.") ¶ 2. Attached as **Exhibit A** to the Curiel Declaration is a true
15 copy of the Notice of Service of Process, Summons, Complaint, Notice of Case
16 Assignment, ADR Information Package, and Voluntary Efficient Litigation Stipulations.
17 See Curiel Decl., ¶ 2. Attached as **Exhibit B** to the Curiel Declaration is a true
18 conformed copy of Starbucks Answer to the Complaint, filed in Los Angeles County
19 Superior Court on September 6, 2012. See Curiel Decl., ¶ 3. There have been no
20 further proceedings in case number BC489781, and no other pleadings have been filed
21 and served upon Plaintiff or Starbucks in this action. See Curiel Decl., ¶ 4.

22 2. Plaintiff Douglas Troester is a former Starbucks employee who worked for
23 a Starbucks store in Burbank, California. Complaint, ¶ 5. He asserts claims for
24 violation of California wage and overtime laws based on alleged off-the-clock work
25 performed during store closing procedures, failure to provide accurate wage statements,
26 failure to pay all final wages upon termination, and violation of the California unfair
27 competition laws and declaratory relief. See Complaint, ¶¶ 9-11, 32-69. Plaintiff

1 purports to bring these claims on behalf of a putative class that includes all persons,
 2 except store managers, employed by Starbucks in California who performed off-the-
 3 clock work during store closing procedures. *See Complaint, ¶¶ 10-12.*¹

4 3. The Complaint and Summons were served on August 10, 2012. *See Curiel*
 5 Decl. ¶ 2 & Exh. A. Starbucks Notice of Removal is timely because it is filed within
 6 thirty (30) days of that service. *See 28 U.S.C. § 1446(b).*

7 4. Under 28 U.S.C. § 1441(a), a defendant may remove to federal district
 8 court “any civil action brought in a State court of which the district courts of the United
 9 States have original jurisdiction.” Because the above-described action is a civil action
 10 of which this Court has original jurisdiction, for the reasons set forth below, it may be
 11 removed to this Court.

12 5. **Diversity Jurisdiction.** This Court has diversity jurisdiction over
 13 Plaintiff’s action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
 14 1332(d). Under CAFA, federal district courts have original jurisdiction over a class
 15 action if (1) it involves 100 or more putative class members, (2) any class member is a
 16 citizen of a state different from any defendant, and (3) the aggregated amount in
 17 controversy exceeds \$5 million (exclusive of costs and interest). *See 28 U.S.C. §§*
 18 1332(d)(2), d(5), and (d)(6).

19 6. **Class Size.** The putative class exceeds 100 members. *See Complaint, ¶14;*
 20 Declaration of Jana Rutt in Support of Notice of Removal of Action (“Rutt Decl.”) ¶ 9.

21 7. **Diversity of Citizenship Under CAFA.** “[U]nder CAFA, complete
 22 diversity is not required; ‘minimal diversity’ suffices.” *Serrano v. 180 Connect, Inc.,*
 23 478 F.3d 1018, 1021 (9th Cir. 2007). Minimal diversity exists if any class member is a
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26 1 Class definitions that require a merits-based determination, like the one Plaintiff proposes, are
 27 not appropriate. *See, e.g., Hagen v. City of Winnemucca*, 108 F.R.D. 61, 63 (D. Nev. 1985). *See also*
 28 Manual for Complex Lit. 4th § 21.222 (an order “defining a class should avoid subjective standards . . .
 or terms that depend on resolution of the merits”).

1 citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2). At all relevant
 2 times, there has been diversity of citizenship between the parties to the action.²

3 8. Starbucks is informed and believes that Plaintiff, at the time this action was
 4 commenced, was and is a citizen and resident of the State of California. *See Complaint*
 5 ¶ 5; Rutt Decl. ¶ 11; *Albrecht v. Lund*, 845 F.2d 193, 194-95 (9th Cir. 1988) (finding
 6 citizenship requirement satisfied where plaintiff's complaint contained allegations
 7 consistent with diversity and plaintiff failed to contest the petition for removal).

8 9. Starbucks is not a citizen of the State of California. “[A] corporation shall
 9 be deemed to be a citizen of any State by which it has been incorporated and of the State
 10 where it has its principal place of business” 28 U.S.C. § 1332(c)(1). Starbucks is
 11 not incorporated in California. Rather, at the time this action was commenced,
 12 Starbucks was and is a corporation organized and incorporated under the laws of the
 13 State of Washington. *See Complaint* ¶ 6; Rutt Decl., ¶ 2. Nor is California the state in
 14 which Starbucks has its principal place of business. Rather, as shown below, Starbucks
 15 principal place of business is located in the state of Washington.

16 10. The Supreme Court has explained that a corporation's principal place of
 17 business is determined under the “nerve center” test. *See Hertz Corp. v. Friend*, 130
 18 S.Ct. 1181, 1192 (2010). Under the “nerve center” test, the principal place of business
 19 is the state where “a corporation's officers direct, control, and coordinate the
 20 corporation's activities.” *Id.* The Supreme Court further explained in *Hertz* that a
 21 corporation's nerve center “should normally be the place where the corporation
 22 maintains its headquarters” and that a corporation's nerve center is a “single place.” *Id.*
 23 at 1192-93. Relevant factors include where executives reside and maintain offices,
 24 where administrative and financial offices are located, where the board of directors
 25 meets, where income tax returns are filed, and where day-to-day control over the

27 2 Plaintiff alleges that every individual putative class member's damages are under \$75,000.
 28 Complaint, ¶ 3. Even if true, this allegation bears no significance because the \$75,000 threshold is not
 applicable to a removal under CAFA. *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118 (11th Cir. 2010).

1 company is executed. *AHTNA Government Services v. 52 Rausch, LLC.*, No. C 03-
 2 00130 SI, 2003 WL 403359 (N.D. Cal. Feb. 19, 2003); *State Farm Fire & Casualty Co.*
 3 *v. Byrd*, 710 F. Supp. 1292, 1293 (N.D. Cal. 1989).

4 11. Under these criteria, Starbucks principal place of business is in
 5 Washington. Starbucks maintains its corporate headquarters in Seattle, Washington.
 6 Rutt Decl., ¶ 2. Starbucks executive officers, including the chairman, president, chief
 7 financial officer, executive vice-presidents, and general counsel, maintain their offices at
 8 Starbucks headquarters in Seattle, Washington. Rutt Decl., ¶ 3. From its headquarters
 9 in Washington, the Company manages day-to-day operations, including determining and
 10 implementing company-wide policy regarding human resources, marketing, finance,
 11 accounting, income tax, product distribution, and legal issues. Rutt Decl., ¶ 4.
 12 Meetings of Starbucks Board of Directors and stockholders take place in the state of
 13 Washington. Rutt Decl. ¶ 5. In addition, Starbucks financial records are maintained in
 14 Washington, and the Company's tax returns are filed from the executive offices in
 15 Washington. Rutt Decl., ¶¶ 6-7.

16 12. Accordingly, this action is between citizens of different states—Plaintiff,
 17 who is a citizen of California, and Starbucks, which is a citizen of Washington.

18 13. **Amount in Controversy Under CAFA.** Starbucks avers, for purposes of
 19 this Notice only, that Plaintiff's claims place more than \$5 million in controversy.³

20 14. Although Plaintiff alleges that her claims amount to less than \$5 million
 21 (*see* Complaint, ¶ 3), this case still meets the jurisdictional requirements for removal
 22 because it is certain that there is, in fact, more than \$5 million in controversy. In
 23 *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d 994 (9th Cir. 2007), the Ninth
 24 Circuit established a defendant's burden of proof for showing the amount in controversy
 25 in a CAFA diversity case where, as here, a plaintiff pleads damages of less than the

26 27 28 ³ A defendant may make the requisite showing by setting forth additional facts in the notice of
 removal or by affidavit. *See Lamke v. Sunstate Equipment Co., LLC*, 319 F. Supp. 2d 1029, 1032 (N.D.
 Cal. 2004).

1 jurisdictional amount. *Id.* at 998-99. The *Lowdermilk* court acknowledged that while a
 2 plaintiff is the “master of her complaint and can plead to avoid federal jurisdiction,”
 3 such discretion is not absolute and may be overcome by a showing to a “legal certainty”
 4 that jurisdiction exists. *Id.* Thus, *Lowdermilk* makes clear that a plaintiff’s allegation is
 5 not dispositive of the amount in controversy. Rather, it simply triggers the “legal
 6 certainty” standard against which the defendant’s evidence is judged. *Id.* See, e.g.,
 7 *Lara v. Trimac Transp Serv. (Western) Inc.*, No. CV 10-4280-GHK (JCx), 2010 WL
 8 3119366 (C.D. Cal. Aug. 6, 2010) (defendant may remove case even where plaintiff
 9 limits recovery in the complaint to under the jurisdictional minimum if it is certain that
 10 the amount in controversy is nonetheless over the jurisdictional minimum); *Collins v.*
 11 *Guitar Center, Inc.*, Nos. 09md2121, 10cv755-LAB (POR), 2010 WL 2682760, at *1-3
 12 (S.D. Cal. July 2, 2010) (finding defendant established with certainty that amount in
 13 controversy in wage and hour case exceeded \$5 million where named plaintiff
 14 specifically disclaimed all recovery over \$4,999,999).

15 15. Here, it is a legal certainty that the amount in controversy surpasses \$5
 16 million. For his Third Cause of Action, Plaintiff alleges that Starbucks owes penalties
 17 for having failed to pay all wages to employees upon the end of their employment, as
 18 required by Section 203 of the California Labor Code. *See* Complaint, ¶¶ 52-62. Under
 19 Section 203, former employees whom an employer willfully denied wages may recover
 20 penalties in the amount of their daily rate of pay for a period of up to thirty days. *See*
 21 Cal. Lab. Code § 203. Plaintiff alleges that Starbucks “applied centrally devised
 22 policies and practices” that resulted in class members performing work off the clock
 23 during closing shifts. Complaint, ¶¶ 32-34. Thus, under Plaintiff’s theory, all non-
 24 exempt California employees who worked closing shifts (except store managers) were

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1 paid less than they are owed, and therefore any of these individuals who are former
 2 employees are owed Section 203 penalties. *See Complaint, ¶¶ 12, 59-61.*⁴

3 16. Starbucks has employed more than 50,000 individuals in the non-exempt
 4 barista position in California stores since August 6, 2009. Rutt Decl., ¶ 9. Of those
 5 individuals, more than 25,000 are no longer employed with the company. *Id.* Thus,
 6 Plaintiff's putative class potentially includes more than 25,000 individuals who could
 7 recover Section 203 penalties under Plaintiff's claim. These individuals earned at least
 8 \$8.00 per hour, the minimum wage in California as of August 6, 2009.⁵ Rutt Decl.,
 9 ¶ 10. Because these individuals typically worked at least four hours per day, their
 10 average daily rate of pay is at least \$32.00. *Id.* Accordingly, a 30-day penalty would be
 11 at least \$960 per person. Many baristas work closing shifts and, even if only *one-fourth*
 12 of these former employees ever worked a closing shift, the amount of Section 203
 13 penalties in controversy still exceeds \$5 million. Rutt Decl. ¶ 12.

14 17. Thus, without even considering other store positions or Plaintiff's claims
 15 for other wages and penalties or her claim for attorneys' fees, the amount in controversy
 16 clearly exceeds the jurisdictional threshold. *See Lowermilk*, 479 F.3d at 1000 (attorneys
 17 fees are included in the amount in controversy in a class action) (citations omitted).

18 18. There are no grounds that would justify this Court in declining to exercise
 19 its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or require it to decline to exercise
 20 jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

21 19. **Venue.** The United States District Court for the Central District of
 22 California is the judicial district embracing the place where Case No. BC489781 was
 23
 24

25 ⁴ A three-year statute of limitations applies to claims brought pursuant to Section 203. *See*
 26 *Complaint, ¶12; Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395-96 (2010).

27 ⁵ The California Department of Labor Standards Enforcement website indicates that the
 28 minimum wage in effect as of January 1, 2008 is \$8.00. *See* http://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm (September 4, 2012).

1 filed by Plaintiff and is therefore the appropriate court for removal pursuant to 28
2 U.S.C. § 1441(a).

3 WHEREFORE, Starbucks requests that the above action now pending against it
4 in the Superior Court of California, County of Los Angeles, be removed to this Court.
5

6 Dated: September 7, 2012

AKIN GUMP STRAUSS HAUER &
FELD LLP
GREGORY G. KNOPP
MARK R. CURIEL
GALIT A. KNOTZ

9
10 By _____

11 Mark R. Curiel

12 Attorneys for Defendant Starbucks
13 Corporation



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STARBUCKS CORPORATION'S NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332(D)(2), 1441, 1446, AND 1453

1 PROOF OF SERVICE
2

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
4

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los
7 Angeles, California 90067. September 7, 2012, I served the foregoing document(s) described as:
8 **STARBUCKS CORPORATION'S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28**
9 **U.S.C. §§1332(D)(2), 1441,1446, AND 1453** on the interested party(ies) below, using the following
means:

10 Shaun Setareh
11 Hayley Schwartzkopf
12 Law Offices of Shaun Setareh
13 9454 Wilshire Boulevard, Penthouse
14 Beverly Hills, CA 90212
15 Telephone : (310) 888-7771
16 Facsimile : (310) 888-0109

17 David Spivak
18 The Spivak Law Firm
19 9454 Wilshire Boulevard, Suite 303
20 Beverly Hills, CA 90212
21 Telephone: (310) 499-4730
22 Facsimile: (310) 499-4739

23 Louis Benowitz
24 Law Offices of Louis Benowitz
25 9454 Wilshire Boulevard, Penthouse
26 Beverly Hills, CA 90212
27 Telephone : (310) 888-7771
28 Facsimile : (310) 888-0109

29 BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the
30 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
31 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
32 collection and processing correspondence for mailing. On the same day that correspondence is placed
33 for collection and mailing, it is deposited in the ordinary course of business with the United States
34 Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

35 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
36 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
37 placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
38 drop box of the overnight delivery carrier.

39 BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed
40 to the respective address(es) of the party(ies) stated above and providing them to a professional
41 messenger service for service.

42 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
43 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
44 placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
45 drop box of the overnight delivery carrier.

46 (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose
47 direction the service was made.

48 Executed on September 7, 2012, at Los Angeles, California.

49 Robin-lyn Mendick
50 [Print Name of Person Executing Proof]

51 [Signature]